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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.	
08/354,450	12/12/1994	GARY K. MICHELSON	P10936V	3041	
22882	7590 11/04/2004		EXAM	INER	
MARTIN & FERRARO, LLP 1557 LAKE O'PINES STREET, NE			DEMILLE, I	DEMILLE, DANTON D	
HARTVILLE, OH 44632			ART UNIT	PAPER NUMBER	
		•	3764		
			DATE MAILED: 11/04/2004		

Please find below and/or attached an Office communication concerning this application or proceeding.

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	Application No.	Applicant(s)
Advisory Action	08/354,450	MICHELSON, GARY K.
navicery neuen	Examiner	Art Unit
	Danton DeMille	3764
The MAILING DATE of this communication appe	ears on the cover sheet with the c	orrespondence address
THE REPLY FILED 20 September 2004 FAILS TO PLA Therefore, further action by the applicant is required to a inal rejection under 37 CFR 1.113 may <u>only</u> be either: (1 condition for allowance; (2) a timely filed Notice of Appea Examination (RCE) in compliance with 37 CFR 1.114.	void abandonment of this applica) a timely filed amendment whicl	ation. A proper reply to a h places the application in
PERIOD FOR RE	EPLY [check either a) or b)]	•
a) The period for reply expiresmonths from the mailir		
b) The period for reply expires on: (1) the mailing date of this no event, however, will the statutory period for reply expire ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS 706.07(f). Extensions of time may be obtained under 37 CFR 1.136(a). The ee have been filed is the date for purposes of determining the period see under 37 CFR 1.17(a) is calculated from: (1) the expiration date of	later than SIX MONTHS from the mailing S FILED WITHIN TWO MONTHS OF THe date on which the petition under 37 CF of extension and the corresponding amo	g date of the final rejection. HE FINAL REJECTION. See MPEP R 1.136(a) and the appropriate extension out of the fee. The appropriate extension
2) as set forth in (b) above, if checked. Any reply received by the Offi imely filed, may reduce any earned patent term adjustment. See 37 (CFR 1.704(b).	
 A Notice of Appeal was filed on <u>20 September 2004</u> CFR 1.192(a), or any extension thereof (37 CF 		
The proposed amendment(s) will not be entered b	ecause:	
(a) they raise new issues that would require furth	er consideration and/or search (s	see NOTE below);
(b) they raise the issue of new matter (see Note because of the second o	pelow);	
(c) they are not deemed to place the application i issues for appeal; and/or	n better form for appeal by mate	rially reducing or simplifying the
(d) they present additional claims without cancel NOTE:	ing a corresponding number of fi	inally rejected claims.
3. Applicant's reply has overcome the following rejec	tion(s):	
 Newly proposed or amended claim(s) would canceling the non-allowable claim(s). 	be allowable if submitted in a se	eparate, timely filed amendment
5. ☐ The a) ☐ affidavit, b) ☐ exhibit, or c) ☐ request for application in condition for allowance because: Se		dered but does NOT place the
6. The affidavit or exhibit will NOT be considered bed raised by the Examiner in the final rejection.	ause it is not directed SOLELY t	o issues which were newly
7. For purposes of Appeal, the proposed amendmen explanation of how the new or amended claims w		
The status of the claim(s) is (or will be) as follows:		
Claim(s) allowed: Claim(s) objected to: Claim(s) rejected: 29-300.		
Claim(s) withdrawn from consideration:		
8.☐ The drawing correction filed on is a)☐ app	roved or b) disapproved by t	he Examiner.
9. Note the attached Information Disclosure Stateme	nt(s)(PTO-1449) Paper No(s)	<u> </u>
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		Danton DeMille Primary Examiner Art Unit: 3764

U.S. Patent and Trademark Office PTOL-303 (Rev. 11-03) Continuation of 5. does NOT place the application in condition for allowance because: Regarding the new matter issues a) and b), applicant points to pages 6 and 7 in the specification for support and states the surface of the meniscus is curved and extrapolates that the flexible member would then also curve as it deforms to the surface of the meniscus. The specification states that the flexible member deforms to the surface of the meniscus at an "angle of the meniscus" not to the curve of the meniscus. To state that the meniscus is curved and therefore the flexible member would also curve goes beyond the specification as originally disclosed. The specification states that the flexible member would conform by pivoting at an angle. To now state that it curves goes beyond what was originally disclosed. Regarding issues c) and d), applicant provides the basis for the mathematical calculations supporting the claimed flexible member having a greater surface area to mass ratio than that of the shaft. The drawings are not drawn to scale and therefore no specific dimensions and ratios can be made from drawings. Moreover, if this limitation were now critical to the patentability of the invention then the written specification would have provided support for these critical ratios.

Regarding issues e) and f), the claims have been amended to overcome these issues.

Regarding issue g), this issue has been withdrawn in view of applicant's arguments.

Regarding issue h), the claims have been amended to overcome this issue.

Regarding issue i), the claim positively recites that the flexible member is designed with this angle of less than 90 degrees however, this angle only exists after it has been inserted in the meniscus and the flexible member has deformed to take this angle. This angle may exist but only after it has been deformed during use.

Regarding issue j), applicant argues that the outer perimeter of the flexible member remains in the same plane as it moves from the position in figure 6 to the position in figure 7. It is agreed that the flexible member remains in the same plane thereby also supporting the examiner's position that the flexible member cannot be curved or concave as set forth in issues 1) and b) above. This issue has been withdrawn.

Regarding issues k) and I), the same above arguments above in issue i) would apply here as well. The claimed angles only exist during use and are not properties of the device as made.

Regarding Warren, applicant has taken Warren's dimensions of the head and improperly concluded that such dimensions are for strengthening of the head. It is not supported in Warren that these dimensions are to compensate for the method of driving the fastener into the tissue. Applicant's invention is also driven into the tissue by contacting the head of the fastener with a driver. Even with Warren's dimensions it still would not preclude the head from flexing at least to some extent. Moreover, changes in dimensions from Warren's invention are not seen as patentable. The same would apply to Bays.